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CITATIONS

575970—44——1

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 482

CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA

BRIEF FOR THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION

OPINION

The opinion (R. 56–64) of the specially constituted district court is reported in 50 F. Supp. 249. The report (R. 5–18) of the Interstate Commerce Commission is not officially reported.

JURISDICTION

The final decree of the district court was entered June 12, 1943 (R. 68), and the appellants' petition for appeal (R. 199) was filed August 9,

1943; the appeal was allowed the same day (R. 201). The jurisdiction of this Court was invoked under the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; 28 U. S. C. sec. 47a) and Section 238 of the Judicial Code, as amended by the Act of February 12, 1925 (c. 229, 43 Stat. 936, 938, par. 4; 28 U. S. C. sec. 345); and by Section 205 (h) of Part II of the Interstate Commerce Act (c. 498, 49 Stat. 543; 49 U. S. C. sec. 305 (h)). Probable jurisdiction was noted on December 13, 1943 (R. 211).

QUESTIONS PRESENTED

1. Whether in a "grandfather" clause proceeding the Interstate Commerce Commission may authorize a motor carrier to serve intermediate points on certain routes not actually served on the "grandfather" date, when it was shown that the carrier began operations only two months prior to the "grandfather" date and had held out service to such intermediate points, and that there was a public need for the service.

2. Whether, in a public convenience and necessity proceeding, the Commission may authorize a motor carrier to serve intermediate points on a route when the Commission found that such service was fulfilling a public need and was required by the public convenience and necessity, and it was shown that the carrier had served such intermediate points on the route as shippers had requested.

3. Whether upon finding that a motor carrier engaged in *bona fide* operations on and prior to the "grandfather" date, including service to all intermediate points upon certain routes, and that the public convenience and necessity required the carrier to serve all intermediate points on another route, the Commission may issue a certificate authorizing service to all intermediate points upon the said routes, notwithstanding the fact that in the course of the "grandfather" proceeding the carrier had stated that he did not claim "grandfather" rights to transport goods between points in Minnesota and in the public convenience and necessity proceeding had applied for leave to amend his application so as to withdraw from the scope of said application all service in interstate commerce between points in Minnesota.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. 36–46.

STATEMENT

This is a direct appeal from the final decree (R. 68) of a statutory three-judge district court, dismissing for want of equity a suit filed by several competing railroads, in which they sought to have annulled in part an order of the Interstate Commerce Commission granting to Cornelius W. Styer, doing business as the Northern Transporta-

tion Company and an appellee[1] herein, a certificate of convenience and necessity authorizing operations as a common carrier by motor vehicle under the provisions of Sections 206 (a) and 207 (a) of Part II of the Interstate Commerce Act.

The order resulted from two proceedings arising from applications filed by Styer with the Commission. One was a "grandfather" application under Section 206 (a) of Part II of the Interstate Commerce Act, for authority to operate between Minneapolis and St. Paul, Minnesota (hereinafter called the Twin Cities) and South Dakota points, over several routes (the three which are involved here being designated by the Commission as routes 1, 2, and 3 (R. 16)) and serving all intermediate points. The other was a public convenience and necessity application for a certificate under Section 207 (a) and involved operations over substantially the same routes as those named in the "grandfather" application above referred to, with services to all intermediate points.[2] (R. 6–7.)

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[1] The other appellees are the United States, the Interstate Commerce Commission, and Glendenning Motorways, Inc. Glendenning was the purchaser of Styer's operating rights (R. 80).

[2] At a hearing in the "grandfather" proceeding before a joint board, as provided for in Section 205, Styer withdrew his application for authority to transport goods in interstate commerce from points in Minnesota to other points in the same state (R. 97). In the Section 207 (a) case, Styer filed

Numerous competitors, including both truck lines and railroads, intervened and opposed the applications, and the Minneapolis Traffic Association and the St. Paul Association of Commerce intervened in support of the applications (R. 8, 14). Separate hearings[3] were held upon the applications (R. 6). The joint boards recommended denial of both applications (see R. 6–7). Upon exceptions, the Commission, Division 5, on October 24, 1941, made its report disposing of both proceedings in a single report (R. 5–18).

In an appendix (R. 16–18) to its report, the Commission arranges the numerous operations covered by Styer's applications into 12 routes, eliminating duplications (R. 16). This suit involves only routes 1, 2 and 3,[4] and only with

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with the joint board a written "Motion" in which he asked leave to amend his application by withdrawing from its scope "all service in interstate commerce between points in Minnesota" (R. 195–196). The board conditionally accepted this proposed amendment (R. 190).

[3] Transcripts of the testimony in the two hearings cover more than 1,400 typewritten pages, with more than 60 exhibits. An abstract thereof has been printed (R. 90–195), and the certified transcript, which was introduced in the district court, has been transmitted to this Court for possible reference.

[4] Route 1 connects the Twin Cities and Mitchell, South Dakota, via Glencoe, Gaylord, New Ulm and Benton, Minnesota, and Arlington, South Dakota. Route 2, approximately parallel to and north of route 1, extends from Winthrop, Minnesota, through Redwood Falls, Marshall and Ivanhoe, Minnesota, to Brookings, South Dakota. Route 3 extends southwesterly from the Twin Cities at Mankato, Minnesota,

respect to service between the Minnesota points thereon. The Commission found that the applicant was entitled to a "grandfather" certificate authorizing operations between the termini of all three routes, with service between all intermediate points on routes 1 and 2. As to route 3, the Commission found that the public need for intermediate service had been shown and that accordingly a certificate of convenience and necessity should issue under Section 207 (a) as to all intermediate points. (R. 15–16.)

Applicant Styer began his trucking operations about April 1935, having for several years previous thereto been employed by a trucking concern located at Huron, South Dakota. Starting with two trucks, he had secured as additional equipment two tractors and two semi-trailer units by the "grandfather" date of June 1, 1935. (R. 9, 90.) In its report, the Commission describes (R. 9) the evidence and reaches the conclusion "that applicant has satisfactorily established operations over routes 1 to 5, inclusive, in the transportation of general commodities"[4] (R. 10).

In a separate paragraph (R. 10–11) of its report, the Commission discussed the service to the

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thence to Madelia, then to Fairmont and thence through Jackson, Worthington, Adrian and Luverne, Minnesota, into and via Sioux Falls, South Dakota, to Mitchell, South Dakota (R. 16-17, 126 A).

[4] Appellants do not question the correctness of this finding or complain of the issuance of a "grandfather" certificate based on it.

points between the termini of the routes in question. While Styer in both his original applications had sought authority to serve all intermediate points, he had at the hearing in each proceeding withdrawn his claim for permission to transport interstate shipments between Minnesota points.* As to the intermediate points on routes 1 and 2, the Commission said (R. 10–11):

> Prior to June 1, 1935 applicant served the intermediate points on routes 1, 2, 4, and 5 of Brookings, Iroquois, Forestburg, and Madison. Applicant does not claim the right to transport interstate shipments from the Twin Cities to points on his routes in Minnesota, but claims that such points were served eastbound from South Dakota. Although the proof of service at intermediate points on the above routes is not impressive, when considered in connection with the fact that operations by applicant were instituted only 2 months prior to the statutory date and the testimony of applicant that he did not limit his service to terminal points but held out service at all intermediate points and actually solicited such business, we are convinced that he should be authorized to serve all intermediate points on routes 1, 2, 4, and 5, and

* A shipment originating and delivered in Minnesota would of course be in intrastate commerce and not subject to Part II of the Interstate Commerce Act. The Minnesota shipments involved in this proceeding are those originating in or destined for other states and which Styer handles in interchange with some other carrier.

that a restriction to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed.

Having thus explained its reasons for authorizing "grandfather" service to and from all intermediate points on routes 1 and 2, the Commission next took up (R. 11) applicant's right to serve intermediate points on route 3 under the "grandfather" clause of Section 206 (a), and concluded that because no service whatever was shown to have been rendered to any intermediate point on route 3 prior to the "grandfather" date, "we are of the opinion that applicant has failed to establish such bona fide operation to points on this route as would entitle him to rights under the 'grandfather' clause to serve all intermediate points there" (*ibid.*). The Commission then discussed (R. 13–15) Styer's operations instituted subsequent to June 1, 1935, which include service to intermediate points on route 3 and discussed the "evidence tending to show a need for the continuance of such operations or the adequacy of other facilities" (R. 13).

The report enumerates shipments to and from intermediate points on route 3. (See footnote 4, pp. 5–6, *supra*). Most of these shipments, it is true, were to or from South Dakota points but they indicated that the operation as it developed subsequent to the "grandfather" date embraced

service to Minnesota points on this route. Shippers testified as to their need for the service. The Commission decided that such evidence, together with the showing of applicant's long and successful operation, the growth of applicant's business and the increase in the amount of freight moving and the consequent need for increased transportation facilities, was convincing proof that Styer's service in this area was fulfilling a public need. (R. 15.) Accordingly, it refused to "require the discontinuance of his existing service between the Twin Cities and Sioux Falls, Yankton, and intermediate points on route[s] 3 * * *, in connection with operations over the routes applicant is found entitled to operate by reason of his 'grandfather' rights" (R. 15).

The Commission made the following pertinent findings (R. 15–16):

> We find, in number MC–47644, that on and continuously since June 1, 1935, applicant was and has been in bona fide operation, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities, except those of unusual value and except dangerous explosives, commodities in bulk, and commodities requiring special equipment, between the points and over routes 1 to 5, inclusive, described in the appendix hereto, serving all intermediate points except those on route 3 and serving South St. Paul, Minn., as an off-route point.

> We further find, in No. MC–47644 (Sub-No. 1), that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities, with the exceptions specified above, between the points and over routes 6, 10, and 11 and that part of route 9 between Stanley Corners and Yankton, S. Dak., described in the appendix hereto, serving all intermediate points on those routes, except Beresford, S. Dak., and all intermediate points on route 3, also described in the appendix hereto; that applicant is fit, willing and able properly to perform such service and to conform to the provisions of the act and our rules and regulations thereunder.

A suitable certificate (R. 19–21) was issued to Styer on July 11, 1942, in accordance with the Commission's report and order[1] (R. 18–19).

On September 22, 1942, Styer executed an agreement of lease, with option to sell, to Glendenning Motorways, Inc., a Minnesota corporation, one of the appellees herein (R. 30). Shortly thereafter, the Commission issued temporary authority for the operation of the Styer rights and properties by Glendenning pursuant to the terms of the lease

[1] Styer had been carrying on the operations involved since 1935. Under the "pendency" provisions of Section 206 (a), such a practice was lawful during the pendency of the application, which was filed February 12, 1936 (R. 7).

(R. 50). On March 13, 1943, the Commission approved the sale under the option contract of Styer's operating rights and equipment to Glendenning (R. 80).

The complaint (R. 1–5) was brought by four railroads operating in the territory traversed by routes 1, 2 and 3. It recites the proceedings before the Commission and prays that the Commission's order be set aside in so far as it authorizes service to and from any point in Minnesota except the Twin Cities, upon the broadly stated grounds that the portions of the order objected to are "erroneous, contrary to law, in excess of the authority of the Commission, and unsupported by evidence" (R. 3–4).

The United States, the Interstate Commerce Commission, and Styer were named as defendants (R. 1); Glendenning intervened in support of the Commission's order (R. 56). The United States and the Commission answered, denying the charges of illegality and alleging that the Commission's action was in accordance with law and fully supported by the evidence (R. 22, 23). Defendants Styer and Glendenning made similar answers with the additional defense of laches (R. 25, 52). On February 23, 1943, the case came on for hearing before a statutory three-judge court at Minneapolis, Minnesota (R. 68), and a certified copy of the Commission's record was introduced in evidence by the plaintiffs (R. 69, 90). Defend-

ants Styer and Glendenning introduced evidence in support of their defense of laches (R. 68).

On June 12, 1943, the court handed down its opinion in which it held that the Commission's certificate was valid and, therefore, that it was not necessary for it to pass upon the issue of laches raised by defendants Styer and Glendenning (R. 56). On the same day, the court made its findings of fact and conclusions of law (R. 65–67) and entered its final decree (R. 68).

SUMMARY OF ARGUMENT

I

It being conceded by appellants that a certificate under the "grandfather" proviso was properly issued to Styer authorizing the transportation of freight between the termini of routes 1, 2, and 3 and to and from some of the intermediate points, the issues in this case involve only Styer's authority to serve the intermediate points in Minnesota. The evidence shows that Styer solicited business for all intermediate points; that it was from the beginning his purpose to render service to all points; that his facilities were sufficient to enable him to do so; and that he had directed his drivers to solicit transportation in either direction in all the towns on the routes through which they passed. The fact that the number of intermediate points actually served was somewhat limited although Styer purported to serve all intermediate

points, is to be accounted for by the fact that upon the "grandfather" date, June 1, 1935, Styer's operations had been continued only about two months. These circumstances warranted the Commission's holding that Styer had served or held himself out to serve the termini and all intermediate points on routes 1 and 2 and hence was entitled to a "grandfather" certificate which included authority to serve all points upon the routes.

The Commission is not required in issuing a "grandfather" certificate (sec. 206 (a)) to make it conform with mathematical exactness to the services actually rendered during the "grandfather" period. It is required only to issue a certificate covering operations having the general characteristics of those carried on by the applicant during the critical period, giving consideration to the applicant's holding out and ability to perform. Styer had been conducting regular route operations between termini with service to and from some intermediate points. The "grandfather" certificate issued under Section 206 (a) is for that type of operation, without confining Styer's future operations to the specific intermediate points previously served.

The Commission properly authorized Styer to serve intermediate points upon route 3 in accordance with his public convenience and necessity ap-

plication under Section 207 (a), for the evidence showed that service to such points was needed.

Section 208 (a) has been held to warrant the Commission's granting an irregular route "grandfather" authority embracing an entire state, although actual service rendered by the applicant during the critical period has been limited to a small portion thereof. *Alton R. Co.* v. *United States,* 315 U. S. 15. Similarly, in the instant case, the Commission could authorize service to all intermediate points of a regular route operation, although actual service during the critical period was shown to have been rendered to only some of such points.

Sections 206 (a) and 207 (a) are implemented and supplemented by Section 208 (a), as is shown by the legislative history of the latter provision. This legislative history shows that Section 208 (a) was intended to authorize the Commission to specify service to intermediate and off-route points for the purpose of compelling a more complete discharge of a carrier's responsibilities.

Section 208 (a) requires the Commission to consider public convenience and necessity in connection with the issuance of "grandfather" certificates (sec. 206 (a)) and ordinary certificates of convenience and necessity under Section 207 (a). It requires the Commission in issuing either certificate to specify upon the basis of the public

interest the termini and intermediate points of regular route operations (such as involved here), and the territory of operations in the case of irregular routes. Operations authorized under either Section 206 (a) or Section 207 (a) may, even after issuance—"from time to time"—be conditioned and limited in the public interest (sec. 208 (a)). See *McCracken* v. *United States*, 47 F. Supp. 444 (D. Ore.).

II

Neither Styer's statements made at the hearing in the "grandfather" proceeding to the effect that he did not desire to serve certain intermediate points, nor his motion for leave to limit the scope of his public convenience and necessity application by omitting intermediate points in Minnesota amounted to a stipulation with appellants, the contravention of which would entitle them to a legitimate complaint. Styer's acts are not binding upon the Commission since proceedings before it involve not only the applicant and the protestants but also the public. It is the Commission's duty to see that the interests of the public are conserved. Therefore, the Commission cannot permit such acts of Styer's to prevent or divert it from its duty to issue the kind of certificate that is suitable under Sections 206 (a), 207 (a) and 208 (a).

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ARGUMENT

I

THE INCLUSION OF AUTHORITY TO SERVE INTERMEDIATE POINTS IN MINNESOTA IN THE CERTIFICATE FOR OPERATIONS OVER ROUTES 1, 2 AND 3 WAS WARRANTED BY LAW

A. THE CERTIFICATE WAS AUTHORIZED BY SECTIONS 206 (A) AND 207 (A)

The Commission's action with respect to operations over routes 1, 2 and 3 insofar as it authorizes the performance of through transportation between the termini and services to and from the intermediate points along the routes in South Dakota is not questioned in this suit. Appellants object only to authorization of service to and between intermediate points in Minnesota. If successful, their endeavors would result in permitting Styer to serve the terminal points of the routes and intermediate points in South Dakota, but would restrict him from serving similar points in Minnesota. He would be required to follow the wasteful practice of running his trucks empty through Minnesota to and from the Twin Cities except for such freight as he might secure to or from South Dakota points (cf. *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, 488), although it is clear that he had no intention of doing this on or prior to June 1, 1935, the "grandfather" date.

The record shows that Styer solicited and was ready to perform service to and from intermediate points in Minnesota. Thus, Styer testified as follows (R. 92–93, 94):

> On and prior to June 1, 1935, I solicited business for intermediate points on the regular routes I operated over. * * *
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> It was my purpose from the beginning to solicit and render service to the intermediate points. * * * We accepted any freight we were able to get from the time we started. We solicited freight for all points along the route. * * * my facilities were such as to permit carrying shipments to the intermediate points not covered by Exhibit 3. [R. 132–133.] There was actual space on my trucks which would have allowed me to accept, carry and deliver shipments to these intermediate points had I received any during the period prior to June 1, 1935. Never at any time did I intend or offer to the public simply a non-stop operation between the Twin Cities and Huron prior to June 1, 1935.
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> * * * The drivers were instructed to solicit business from all towns on the routes through which they passed, to solicit freight in either direction.

Although this testimony did not show actual service to all intermediate points along the routes prior to the "grandfather" date, it was strong evidence of holding out, solicitation, willingness,

and capacity to serve. The Commission took into consideration the fact that on the "grandfather" date, Styer's enterprise, having been initiated in April 1935, was only two months old. This circumstance explained the limited number of intermediate points actually served, though applicant held out and offered service to all points. And it is clear from a number of decisions by the Commission in "grandfather" cases that the same strictness of proof is not required where service to intermediate points rather than terminal points is involved. In such cases, service may be authorized to particular intermediate points not actually served in the past where, as here, there was actual service to some intermediate points (the South Dakota ones here; see p. 16, *supra*; R. 10) and a genuine holding out [8] to serve the other intermediate points. See *Nevitt Common Carrier Application*, 4 M. C. C. 298, 360; *Consolidated Freight Lines, Inc., Common Carrier Application*, 11 M. C. C. 131, 136; *Knaus Common Carrier Application*, 20 M. C. C. 669, 671; *Los Angeles-Seattle Motor Express, Inc., Common Carrier Application*, 24 M. C. C. 141, 145; *Tarbet Common Carrier Application*, 31 M. C. C. 63, 66–67.[9] And where, as here,

[8] The holding out was deemed crucial in *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, 487–488; cf. *Noble* v. *United States*, 319 U. S. 88, 92.

[9] Appellants refer (Br. 20) to proceedings before the Commission in *W. D. Gill Common Carrier Application*, 29 M. C. C. 475, and *Denver-Chicago Trucking Company Common Carrier Application*, 27 M. C. C. 343, as authority for

there has been a settled construction of a statute by the administrative authorities entrusted with its application, such construction will not be lightly disturbed by the courts. See, *e. g.*, *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315; *United States* v. *Chicago North Shore R. Co.*, 288 U. S. 1; *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488; *Boston & Maine Rd.* v. *Hooker*, 233 U. S. 97. It has been held that this is especially true of constructions by the Commission of the language of Part II of the Interstate Commerce Act in view of the fact that the Commission proposed it to Congress. *United States* v. *American Trucking Associations*, 310 U. S. 534, 549.

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the statement that the Commission has consistently held that mere operation over a highway is not sufficient to lay a foundation for "grandfather" rights to serve intermediate points which receive no actual service during the "grandfather" period. The Commission's report in the *Denver-Chicago* case indicates that the Commission there found neither service to intermediate points nor a holding out to serve. In the *Gill* case, the Commission did hold that it was not under a legal requirement to include in a "grandfather" certificate authorizing operation between termini service to all points along the routes. However, the Commission cited Section 208 (a) as a direction to it "to determine what intermediate points an applicant under the 'grandfather' clause should be authorized to continue to serve, depending on the facts in the particular case, * * *." The Commission pointed out too that there was no testimony before it indicating service prior to the "grandfather" date to the intermediate points in question "*or that applicant has held himself out to serve* any additional points." [Italics supplied.] (29 M. C. C. at pp. 476, 477.)

In view of the holding out of operations to the intermediate Minnesota points in question, and the brevity of Styer's operations before the "grandfather" date, the Commission could properly conclude that Styer was on the "grandfather" date in *bona fide* operation with respect to all intermediate points on routes 1 and 2. In its report (R. 11), the Commission said that since it appeared that Styer had not limited his service, but offered service to all intermediate points and actually solicited such business, it was convinced that a restriction as to intermediate points would make the operation unnecessarily complicated. Hence, it found that Styer was entitled to a "grandfather" certificate upon routes 1 and 2, covering all intermediate points.

In its opinion the lower court said (R. 58):

> The Commission, in the "grandfather" proceeding, authorized Styer to serve, in both directions, all points located on routes 1 and 2, finding that he was in bona fide operation as a common carried by motor vehicle over those routes, serving all intermediate points, on June 1, 1935, and thereafter. Unless this finding of the Commission is wholly without support in the evidence, it is conclusive upon this court. We cannot concern ourselves with the question of the correctness of the finding, but only with the question of the power of the Commission to make it. The power to decide a question includes jurisdiction to decide it

> either correctly or incorrectly. Pittsburgh Plate Glass Co. *v.* National Labor Relations Board, 8 Cir., 113 F. 2d 698, 107. * * *

Answering the appellants' contention that the evidence above referred to was not sufficient to support the Commission's action, the lower court stated in its opinion that the Commission was free to place its own interpretation upon the testimony received by it as to the extent of the service rendered. The court dissented from the suggestion that a "grandfather" certificate could be issued only in the exact pattern of the actual transportation performed, saying (R. 61, 62):

> The Commission was not compelled to limit Styer to the exact pattern of his operations prior to June 1, 1935, and, in determining the scope of his "grandfather" rights, it could take into consideration the service which he was offering, as well as that which had actually been performed by him, prior to that date. United States *v.* Carolina Freight Carriers Corp., supra, pages 483–484. * * *
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> * * * * *
>
> It must be true, however, that the Commission, in determining the nature and extent of the "grandfather" rights of a carrier in a particular case, is not required to do so with mathematical precision, and that, within reasonable bounds, its estimate of the character and scope of the carrier's bona fide operation on and prior to June 1,

> 1935, must be accepted by the courts, which cannot substitute their judgment for that of the Commission.

In the public convenience and necessity proceeding, the Commission, acting under Section 207 (a), authorized service to and from intermediate Minnesota points on route 3. This action was fully supported by the evidence outlined (R. 13, 14, 15; see also R. 190, 191) in the Commission's discussion of operations instituted by Styer during the so-called interim period (between June 1 and October 15, 1935; sec. 206 (a)).

B. SECTIONS 206 (A) AND 207 (A) SHOULD BE CONSTRUED IN CONJUNCTION WITH SECTION 208 (A)

The Commission's authority to "round out" the service authorized by a certificate, either under the "grandfather" proviso of Section 206 (a) or under proof of public convenience and necessity as required by Section 207 (a), is to be found in the provisions of Section 208 (a), which reads in part as follows:

> Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there

> shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204 (a) (1) and (6): * * *

It should be noted that the authority of the Commission to specify the service to be rendered and the intermediate points to be served applied to "grandfather" and ordinary certificates under both Sections 206 and 207, and that the certificates are, to the extent stated, to be governed by public convenience and necessity. It is further to be noted that the statement of the National Transportation Policy (Appendix, *infra*, p. 36) includes the regulation of all modes of transportation toward the promotion of safe, adequate, economical and efficient transportation service, and further provides that all the provisions of the Act should be administered and enforced with a view to carrying out the policy so declared. The expert judgment of the Commission in the transportation field clearly warrants its giving consideration to a well-organized transportation service, even in connection

with the issuance of a certificate under the "grandfather" proviso."

In *Alton R. Co.* v. *United States*, 315 U. S. 15, this Court held that a "grandfather" certificate may be issued for an irregular route service throughout a state when there is no evidence of actual service to many portions of the territory covered by the certificate. The railroad appellants there contended that the Commission was without authority to authorize the applicant to serve a whole state where his services had in fact been limited to only a few points therein. In reply, after referring to the requirement of Section 206 (a) for *bona fide* operations, the Court quoted Section 208 (a) and concluded that "While the test of 'bona fide operation' within a specified 'territory' includes 'actual rather than potential or simulated service' (*McDonald* v. *Thompson*,

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[10] Because of the National Transportation Policy, the Commission was empowered to find, as it did, that a "restriction [of "grandfather" rights] to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed" (R. 11). And the legislative history of Section 14 (1) of Part I of the Act (49 U. S. C. 14 (1)), which Section 204 (d) (49 U. S. C. 304 (d)) makes applicable to Part II, makes it plain that the Commission is not required to make formal and precise findings. H. Rep. No. 591, 59th Cong., 1st sess., p. 4; see also *Meeker & Company* v. *Lehigh Valley R. R.*, 236 U. S. 412, 428; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 487; *United States* v. *Louisiana*, 290 U. S. 70, 80; *United States* v. *Baltimore & Ohio R. R. Co.*, 293 U. S. 454, 465.

305 U. S. 263, 266), it does not necessarily restrict future operations to the precise points or areas already served. * * *" (315 U. S. at p. 21). The Court stated that the Commission may take into consideration the characteristics of the transportation service offered by an applicant in determining the scope of his territory and that this determination "is for the administrative experts, not the courts" (315 U. S. at p. 23).

Thus, in the *Alton* case, the Court recognized that Section 208 (a) is accessory to Section 206 (a) in authorizing the Commission to designate the "territory" within which irregular route operations may be conducted.[11] It is submitted that similarly Section 208 (a) must confer power upon the Commission to specify the "intermediate

[11] The opinion in *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, also recognized the effect of Section 208 (a) upon the Commission's duties under Section 206 (a). The Court said (p. 480):

"Section 208 (a) requires that the certificate specify 'the routes over which, the fixed termini, if any between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate.' * * * Authority to operate within a specified 'territory' may include permission to service all points within that area * * *. The precise delineation of the area or the specification of localities which may be serviced has been entrusted by Congress to the Commission. *Alton R. Co.* v. *United States ante* [315 U. S.], p. 15." See also *Crescent Express Lines, Inc.* v. *United States*, No. 65 this Term, decided December 6, 1943, pamphlet pp. 5, 6; cf. *Noble* v. *United States*, 319 U. S. 88, 91–92.

points" to be served in a regular route operation such as is involved here. The very words of the Section compel this conclusion.

The legislative history of Section 208 (a) discloses too that it was enacted to play an integral part in the construction and application of Sections 206 (a) and 207 (a). The provision originally appeared as Section 6 of the Rayburn Bill, but applied only to certificates issued under Section 207 (H. R. 6836, 73rd Cong., 2d sess.). The report of the Federal Coordinator of Transportation, S. Doc. No. 152, 73rd Cong., 2d sess., p. 47, makes the following reference to Section 208:

> Section 308 [Section 208 of the Motor Carrier Act [12]] provides for the designation of the routes and termini over or between which a common carrier may operate or the territory which it may serve under its certificate. *There is added to section 6 of the Rayburn Bill* a provision which authorizes the Commission to *require* service to intermediate and off-route points. This addition is intended to enable the Commission to require a more complete discharge of the responsibilities of a common carrier. [Italics supplied.]

The Coordinator of Transportation, Mr. Eastman, in an unpublished communication of April 3, 1935, addressed to the Senate Committee on Interstate

[12] The Motor Carrier Act was retitled Part II of the Interstate Commerce Act (54 Stat. 899, 919).

Commerce and relative to suggested amendments to S. 1692 (subsequently passed as the Motor Carrier Act, 1935) said (at p. 35):

> The words "306 or" in the first line *are added* so that terms, conditions and limitations may be attached to *certificates under the "grandfather" clause as well as to those subsequently issued.* This is only fair. [Italics supplied.]

And Senator Wheeler, Chairman of the Senate Interstate Commerce Committee, in presenting the amended bill said, "Section 208 (a) * * * as amended, permits the Commission to attach to all certificates, whether granted under the grandfather clause or otherwise, reasonable terms, conditions, and limitations. * * *" (79 Cong. Rec. 5654).

From the above, plus the language of Section 208 (a) itself, it is apparent that the sponsors of the bill which subsequently became the Motor Carrier Act understood and construed Section 208 (a) to authorize the Commission to add "service to * * * intermediate * * * points" to the scope of a "grandfather" certificate, upon considerations of the public need. Thus, Section 208 (a) has in a sense, engrafted considerations of public convenience and necessity upon even the dogmatic requirements of Section 206 (a).

In *McCracken* v. *United States,* 47 F. Supp. 444 (D. Ore.), the effect of Section 208 (a) is discussed in a three-judge statutory court's opinion

dismissing a suit brought by competing carriers to set aside a "grandfather" certificate which granted a carrier authority to serve intermediate points to and from which no actual service had been shown. The plaintiffs contended that the Commission's order was erroneous as to such points because unsupported by any evidence. However, the court pointed out (at p. 446) that although for a time after the enactment of the Motor Carrier Act the Commission construed strictly the rights confirmed by the "grandfather" proviso, "This tendency toward too narrow construction of the rights confirmed to existing carriers has latterly been checked by highest authority [citing the *Carolina Freight Carriers* case]." Section 208, the Court said, was a necessary provision to permit the Commission, while confirming all privileges and rights guaranteed to existing carriers by the statute, to lay the foundation for a consistent transportation system by modifying other operations in accordance with a symmetrical plan of public interest.

The court concluded (p. 447) that—

> While the Commission had no power to take away any rights or privileges * * * they could place such terms in the ["grandfather"] certificate as were required by public necessity to make the operations conducted thereunder consistent with operations carried on by others and convenient for the public. * * *
>
> * * * * *

> The mere fact that the evidence does not show that Pierce Lines in the past had covered these intermediate points in all possible combinations and permutations did not prevent the Commission from imposing on the carrier the necessity of transporting property between these intermediate points, as well as to and from such points, as a condition to the exercise of the privileges confirmed by the certificate.

We submit that the view taken in the *McCracken* case is eminently sound and justifies the action of the Commission in the case at bar.[13]

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[13] Appellants assert (Br. 21), upon the authority of an early decision (*Pan-American Bus Lines Operation*, 1 M. C. C. 190) of the Commission, that the *McCracken* case was erroneously decided. However, the decision referred to has no relevancy here for it did not involve or refer to the Commission's power under Section 208 (a) to require service to intermediate points in certificates authorized by Section 206 (a) or Section 207 (a).

Appellants point out (Br. 22–23) that the convenience and necessity provision affecting the establishment of railroad lines (Section 1 (18) of Part I of the Act) contains a provision (Section 1 (21) of Part I of the Act) specifically giving the Commission power to compel a railroad to provide itself with safe and adequate facilities "and to extend its line or lines". Because the Commission's authority to require motor carrier service to intermediate points is not expressed in exactly similar language, the appellants deny its existence and therefore further assail the *McCracken* decision. Nevertheless, the phraseology of Section 208 (a) is broad enough to include this authority and the legislative history of that Section indicates very clearly that it was the purpose of the Congress to attach to grants of authority for through operation such requirements and conditions relative to the servicing of intermediate points as it believes the public convenience and necessity require. See pp. 26–27, *supra*.

II

THE POWER OF THE COMMISSION TO AUTHORIZE OPERATIONS BETWEEN INTERMEDIATE POINTS ON ROUTES 1, 2, AND 3 WAS NOT VITIATED BY THE APPLICANT'S STATEMENT WITHDRAWING A CLAIM TO "GRANDFATHER" RIGHTS IN SUCH AREA, NOR BY HIS MOTION TO AMEND SIMILARLY HIS PUBLIC CONVENIENCE AND NECESSITY APPLICATION

Styer's original applications prayed authority to serve all intermediate points on all routes (R. 7). At the hearing before a joint board (sec. 205) made up of representatives of the States of Minnesota, North Dakota, and South Dakota, the applicant, through his attorney, stated that he did not seek any "grandfather" rights to transport any goods moving in interstate commerce from any point in Minnesota to another Minnesota point, but that he did claim "grandfather" rights to transport shipments over all regular routes from all regular and irregular route [14] points in South Dakota to every point in Minnesota (R. 97, 98). The evidence does not disclose the applicant's reasons for thus modifying his original request for authority to serve all intermediate points. In the public convenience and necessity proceeding under Section 207 (a), Styer filed a written motion with the joint board in which he asked leave to amend

[14] The Commission found that what Styer considered to be his irregular operation from South Dakota points to Minnesota had in fact "evolved" into a regular route operation (R. 12).

his application by withdrawing from the scope thereof all service in interstate commerce between points in Minnesota (R. 195, 196). It does not appear that the Commission ever took any action either upon the statement of Styer's counsel at the "grandfather" hearing or upon his motion filed in the public convenience and necessity proceeding.[15] The certificate issued by the Commission authorized service as prayed in the original application, "to and from all intermediate points", which, of course, included intermediate points in Minnesota (R. 21).

Appellants describe the above actions taken by Styer as "stipulations" (Br. 11–12; R. 200, 201). We submit that they are in no sense stipulations, which imply mutual obligations between more than one party. Here, there was no mutual assumption of obligation between Styer and appellants. Styer's actions were in effect mere expressions of his attitude at the time. They amount merely to a request addressed to the Commission that Styer be not required to serve all intermediate points, or merely to a motion for leave to amend his applications, which motion the Commission has never granted. Protestants were not parties to these applications, and while the applicant might have complained of the Commission's failure to permit these amendments if he wished, he

[15] The joint board conditionally accepted the amendment proposed in the motion (R. 190).

did not do so. The situation therefore affords no ground for complaint by appellants. If neither the applicant's "grandfather" operations under Section 206 (a) nor the public convenience and necessity under Section 207 (a) warranted the issuance of the certificate, and the appellants were prejudiced thereby, they would be entitled to complain, but they obviously have no right to object (Br. 29–30) that the Commission did not sustain applicant's motion to amend his application.

It is submitted that it was within the sound discretion of the Commission either to permit or to deny the applicant the privilege of amending his applications. A complainant may not as a matter of right withdraw his complaint. *West* v. *Atchison, T. & S. F. Ry. Co.*, 190 I. C. C. 401, 403; *Federated Metals Corp.* v. *Penna. R. R. Co.*, 144 I. C. C. 243. The reason for this rule is that the Commission is obligated to consider and conserve the public interest. *Jewelers' Protective Union* v. *Penna. R. R. Co.*, 36 I. C. C. 71. And in *Cincinnati, etc. Ry. Co.* v. *Interstate Commerce Commission*, 206 U. S. 142, 149, the Court said:

> * * * We think the Commission in making an investigation on the complaint filed by the Procter & Gamble Company had the power, in the public interest, disembarrassed by any supposed admissions contained in the statement of complaint to consider the whole subject and the operation of the new classification in the entire territory, as also

how far its going into effect would be just and reasonable, would create preferences or engender discriminations; in other words, its conformity to the requirements of the act to regulate commerce.

Since the Commission may refuse to permit the dismissal of a complaint if such action would be contrary to the public interest, it may certainly refuse to permit the withdrawal of part of an application for authority to render transportation service to the public, when the withdrawal would result in intermediate points not receiving service. The same considerations which in an earlier portion of this brief (see pp. 15–23, *supra*) are shown to justify the Commission in authorizing service to all intermediate points, although actual service had been shown only to some of them, warranted the Commission's refusal to permit Styer's partial withdrawal of his applications. The Commission, having authorized operations between the termini and to some intermediate points, was empowered, notwithstanding the applicant's attempted withdrawal, to authorize service to all points.

What has been said above with regard to the Commission's refusal to permit amendment of Styer's applications is especially true in connection with Styer's acts if they are to be considered as requests for exemption from the obligation of service to intermediate points. Surely there was no compulsion upon the Commission to omit from

the certificate issued Styer the rendition of service to some intermediate points, while authorizing service to others. The Commission clearly has statutory authority to determine what omission, if any, would be to the public convenience and necessity.

Appellants erroneously contend (Br. 12–13) that the applicant's statements and motion withdrew from the proceeding "the issue" with respect to service between Minnesota points. They rely on a number of rate cases brought upon complaints seeking orders compelling rate changes, perhaps with reparation orders, and under statutes which specifically require hearings. Neither Section 206 (a) nor Section 207 (a) makes any mention of hearings. Appellants say that they were deprived of the hearing to which they were entitled by applicant's action, but they do not point out any "grandfather" or convenience and necessity provision requiring that a hearing be accorded in connection with such matters, even to the applicant.[16] Certainly a competitor will not be heard to complain that he was deprived of a hearing in

[16] Although the applicant here may have had a right to a hearing under the due process clause (*Morgan* v. *United States*, 298 U. S. 468), no vested rights of his competitors are in issue (cf. *Stephenson* v. *Binford*, 287 U. S. 251, 264), and the Constitution does not require that they receive a hearing. Cf. *Singer & Sons* v. *Union Pacific R. Co.*, 311 U. S. 295.

In *Woodruff* v. *United States*, 40 F. Supp. 949, 953 (D. Conn.), a three-judge district court held that in an abandon-

such case, especially by something which not the Commission, but the applicant, has done. Furthermore, appellants have never applied to the Commission for a reopening of the proceedings for the purpose of enabling them to offer evidence in opposition to the grant of authority to serve the intermediate points in Minnesota. Their prayer was for reconsideration by the Commission upon the record already made (and no claim was made therein that they were deprived of a hearing). (See R. 3.[17]) Hence, they should not be permitted to assert that they were deprived of a hearing. And, taking the record as a whole, it is difficult to perceive how the protestants could have made a more comprehensive defense than they did.

It is asserted (Br. 17) that Styer's statement that he did not desire to serve intermediate Minnesota points prevents the Commission from considering his preceding testimony that he did not limit his service to terminal points but instead held out and offered to serve all intermediate points. We submit that the Commission in the performance of its public duty may give consid-

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ment case (sec. 1 (18) of Part I of the Act) the Commission is not required to grant any hearing to private parties. The court held that under the terms of Section 1 (19), in connection with Section 20a (6), the Commission is required to grant a hearing in abandonment proceedings only to the state authorities and the railroad. Cf. *Chicago Junction Case*, 264 U. S. 258, 265, note 10.

[17] Copies of appellants' petitions to the Commission for reconsideration have been lodged with the Clerk of this Court.

eration to such evidence as it considers credible, and that it may act upon such evidence in the public interest. The portions of appellants' brief devoted to the contention that the Commission's findings are erroneous (Br. 17–20, 26–28) raise only the issue of the weight of the evidence. Admittedly, the evidence in the proceedings was conflicting, but every factual statement in the Commission's report is, we submit, supported by substantial evidence. Therefore, under long-standing decisions of this Court, the lower court was right in declining to consider the conflicting evidence and weigh the same. See, *e. g.*, *Wilmington Trust Co.* v. *Helvering*, 316 U. S. 164, 168; *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105, 106, 107.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decree of the district court should be affirmed.

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MARCH 1944.

APPENDIX

The Interstate Commerce Act, as amended by the Act of September 18, 1940, 54 Stat. 899, sets forth the National Transportation Policy as follows:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy. (49 U. S. C. 1.)

Part II of the Interstate Commerce Act, August 9, 1935, c. 498, 49 Stat. 543, as amended. Section 204 (a) provides, in part:

> It shall be the duty of the Commission—
>
> (1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.
>
> * * * * * *
>
> (6) To administer, execute, and enforce all provisions of this part, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration. (49 U. S. C. 304 (a).)

Section 206 (a) provides, in part:

> Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however,* That, subject to section 210, if any such carrier or predecessor in interest was in bona fide opera-

tion as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instances as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: * * *. (49 U. S. C. 306 (a).)

Section 207 (a) provides:

Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of

the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations. (49 U. S. C. 307 (a).)

Section 208 (a) provides:

Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier,

the requirements established by the Commission under section 204 (a) (1) and (6): *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require. (49 U. S. C. 308 (a).)

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES.

No. 482.—October Term, 1943.

Chicago, Saint Paul, Minneapolis & Omaha Railway Company, et al., Appellants,
vs.
The United States of America, Interstate Commerce Commission, et al.

On Appeal from the District Court of the United States for the District of Minnesota.

[April 10, 1944.]

Mr. Justice Jackson delivered the opinion of the Court.

Appellants are five railroads operating in Minnesota and North Dakota. They claim to be aggrieved by an order of the Interstate Commerce Commission granting operating authority to a motor carrier of goods in that territory. Appellee Cornelius Styer, doing business as Northern Transportation Company, made application for two classes of common-carrier rights. As to certain routes he sought "grandfather rights" under Section 206(a) of Part II of the Interstate Commerce Act, 49 U. S. C. § 306(a). As to certain others, he sought authority under sections 206(a) and 207(a) of the Act, 49 U. S. C. § 306(a), 307(a), by showing that the proposed service "is or will be required by the present or future public convenience and necessity." After due hearings both classes of rights were granted. Styer later transferred them to the appellee Glendenning Motorways, Inc.

The railroads brought an action in the District Court for Minnesota against the Commission and the carriers to annul the Commission's certificate, pursuant to 28 U. S. C. § 41(28). The cause came on before a court of three judges who dismissed the complaint on the merits. It was brought here by direct appeal.

It is contended that there is no evidence to support the findings on which the Commission granted operating rights. The court below examined the evidence as to each challenged finding and found each "not unsupported by evidence." It declined, quite properly, to substitute inferences of its own for those drawn by the Commission from testimony and declined to weigh anew conflicts in it. This was no error, and we affirm the findings. *Gregg*

Cartage and Storage Co. v. *United States*, 316 U. S. 74; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125.

The question of law in the case is whether the Commission on its finding need for such service had power to authorize service of intermediate points not asked for by the applicant. The applicant has accepted and is defending the grant, but the competing rail carriers complain of it.

In the grandfather case Styer stated that he did not claim and was not applying for authority to carry goods in interstate commerce from any Minnesota point to any Minnesota point. But he had begun operations only two months prior to the "grandfather" date. The Commission found that he had held out service to such intermediate points and that there was public need for it.

In the convenience and necessity case, before hearing Styer filed an amendment to his application which withdrew request for authority as to "all service in interstate commerce between points in Minnesota." The Commission, however, found that he had served such intermediate points on the route as shippers had requested it, that such service was fulfilling a public need, and was required by the public convenience and necessity.

It is said that these actions withdrew the intermediate points from issue and threw the protesting parties off their guard and that they did not have opportunity for adequate hearing on the matters ultimately decided. However, after receiving the report of Division 5 recommending granting, as was done, the railroads filed a petition for reconsideration. It is not in evidence. Whether surprise was claimed and evidence was indicated that could be added on rehearing, we do not know. The Court endeavors to protect the right of parties to fair hearings, but it will not presume that their rights have been substantially denied when they do not embrace the opportunity to prove their grievance in the court below.

It is clear that the Commission on the facts found had power to include in the authorization provision for service greater than the carrier had asked. Section 208(a) of the Act provides that in any certificate issued under either Section 206 or Section 207 "there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier." 49 U. S. C. § 308(a).

Judgment affirmed.